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HARTWOOD

POLITICIAN.

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NUMBER TWO--FIRST SERIES:

BEING THE SECOND NUMBER OF A SERIES OF PAMPHLETS INTENDED
TO ILLUSTRATE THE

PRINCIPLES OF POLITICAL ECONOMY

AND

PUBLIC LAW.

Entered according to Act of Congress, in the year 1852,

By WILLIAM J. CLOWES,

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P R E F A C E.

The chief difficulty that my present work will have to sustain with its readers will undoubtedly proceed from the fact that I have had in the outset to assume certain important principles to be true which I have thought necessary to substantiate at length in other numbers that are to follow it. Among these principles is the one that we are at all times and under all circumstances doing either good or evil; and I would ask the concurrence of my readers in this truth, because it is one on which the whole subject of Bible Temperance turns for this Temperance, as I intend hereafter most fully to show, is not of a passive nature, and has nothing to do with abstinence of any kind, and when the apostle commands us "to be temperate in all things," we are directed by the positive and clear terms of the original gospel, not to abstain from evil merely, but to strengthen and confirm ourselves in every virtue; and, consequently, temperance does not consist in total abstinence of any kind, but in the proper use and employment of all things that contribute to our physical, mental and moral strength. Total abstinence, therefore, so far from being a virtue, is itself a vice, for the mere refraining from evil being no duty, but implying that some person is doing nothing, which in itself is a crime, it follows that if a person is not doing some good he is doing evil, because he is not doing that good at which he is always commanded by his Maker to be employed.

It may also be inferred that I am no friend to State Rights, since I deny the power of the Legislature of the State of Maine or any other Legislature, to pass a Maine Liquor Law; but it will be found that my ideas of State authority concede more power to State governments, than any other writer upon Constitutional Law among us: but this power as it will be shown, can only be exerted for good; and the reason why the acts of our State Legislatures are decided so often to be unconstitutional is on account of the too frequent practice of our legislators to throw themselves into the hands and into the power of corrupt lobbies and dishonest monopolists, which will account for every unconstitutional and illegal act that has been passed at any time by any of our State Legislatures.

I offer the above remarks to my readers in advance of their commencing the perusal of the number to which these remarks are attached, in order to preclude any opinion that my views upon the Temperance question are based upon visionary or unauthenticated notions, and that the patrons of my future works may be assured that all I have herein asserted with confidence will be fully established afterwards by the soundest and best established principles of moral and legal science.

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HARTWOOD POLITICIAN.

NUMBER 2.

[FIRST SERIES.]

It is probably well known to most of my acquaintances that something more than three years since I undertook the publication of a Periodical under the title of the *Hartwood Politician*, and that in consequence of the politics and policy recommended in the first number of the work not having been either examined or understood by those to whom it was particularly addressed, the work was for a time suspended.

I have thought it expedient therefore upon resuming the work, to inform the future readers of the "Politician," that the term politics, as has been used, and is intended to be used by me, has no connection with the management or results of a popular election, but applies to every subject that can in any way be made instrumental towards promoting the welfare and happiness of individuals and of nations. In this sense the science of politics becomes as necessary to the women and children of every country as to any class of men who may be therein, that are either the actual incumbents of public offices, or are merely the instruments through whom such offices are received by others; for as every person of ordinary understanding, whether adult or child, has the capacity at all times of doing good or evil, it follows that every body can add his mite to the general happiness and welfare if he has any desire to do so.

As it has become common among us to consider politics as something like a great horse race, that occurs at intervals for the especial advancement of office holders and office seekers, and for the excitement and amusement of the great mass of the people, we have been taught to believe that the pursuit and enjoyment of office constitutes the essential ingredient of political science: but no opinion can be more absurd and untrue; for the requirements of the people at large, and the welfare and happiness of each individual or a nation being the only

subjects that are proper for the study of the honest politician, it follows of course that the bickerings and strife of party spirit, are not worthy of being classed with the honorable and highly useful sciences of political economy and public law. In order therefore to understand the subject of politics aright, we should believe it to be a very different matter from that which office seekers and interested party men tell us it is; for we should look at this subject only in that broad light which will permit us to consider the whole world as within the sphere of its operations.

That a regard for office and not any respect for political principles is the main spring of all these party contests which arise amongst us, and are improperly dignified with the name of politics, may be inferred from the violent exertions that are always made among professed brethren of the same faith to secure a party nomination; for, if the common axiom "that principles and not men are to be sought for" is true, there would of course be no other struggle at our nominating conventions than to seek for men who are best acquainted with political science; but as the choice of such conventions generally falls upon men who know more about party than they do about politics, it is no more than fair to infer that the desire and the capacity of getting an office has much more influence in the minds of the persons composing these conventions than an honest wish to secure the most capable men in the country to fill the public station for which a candidate is to be selected.

Since the consideration of politics has been so much superseeded by party spirit among us, no person need be surprised that the *Hartwood Politician* which in its outset disavowed all connection with party politics, should have met with but little attention or notice from the persons who have had an opportunity of perusing its first number; but as party action has within a short time taken a very different direction from every course it has ever taken before; and inasmuch as certain recent extraordinary claims of partizan action to public favor, have no doubt aroused the attention of all reflecting men to the necessity of placing all public measures hereafter upon the safe

foundations of public interest and public justice, I have thought it my duty to offer my paper again to the consideration of the public, as it will be generally conceded that the principles which it proposes to illustrate are the only grounds upon which all individual and national prosperity can be safely and surely founded.

Among the extraordinary claims to public attention which have recently been made by partizan action, there certainly can be none which would be more mischievous in its results, (if it could carry out its end,) than the excitement which is raised among us by what is called the Temperance Question; and as I have supposed that no one subject by which the public mind has been recently agitated can better illustrate the deleterious influence of party spirit in general, than this great question, I shall endeavor to show, that unlike any other subject of public discussion which is or has been before us, it has no redeeming points, but will prove in the end to be one of the weakest and wildest schemes of party action that has at any time heretofore agitated our country.

The practice of drinking ardent spirits is admitted by all to be attended in every country where it prevails with disastrous results; and the good intentions of the thousands who profess to be warm advocates of temperance reform, would be deserving of the greatest praise if their wishes ever brought about any good; but as no righteousness, whether scriptural or otherwise, is right, unless attended with useful results, so no temperance reform however sincerely and earnestly advocated should be considered as worthy of approbation, unless it exhibits evidence and produces results that show its direct practical utility; but, although the temperance people as a body seem to admit that their efforts heretofore have been attended with very little good, they are still as far as ever from being satisfied with the public concessions that have from time to time been made to them, and are yet engaged in asking for new powers and new regulations, still more stringent and more severe than those which in the early stages of their progressive career they had allowed would have been more than sufficient for their purpose.

If our temperance advocates had in general been better instructed in political science, it is possible that they might perceive that the doctrines advocated by their party leaders were bringing far worse evils upon our country, than its greatest enemies have ever been able openly to inflict. But, such is the extended ignorance that exists among us in relation to every thing connected with political knowledge, that there are no doubt thousands of temperance men who have been taught to believe that almost all the evils of life proceed directly from the practice of drinking intoxicating liquors; and it is therefore no doubt sincerely believed by them that as soon as all our taverns and grogshops are suppressed, a millenium of universal happiness and prosperity will commence upon earth; while the plain truth upon the subject is, that intemperance is the direct result of certain evils which do not appear to common view, and to destroy intemperance and the grog shops, we should strike at the root and not at the branches; but, because the drunkard exhibits his frailties and his wickedness in open day, so all that have eyes can see their effects, drunkenness in the opinion of many is the only crime that appears to exist upon the earth; and to cure the only disorder which is supposed to remain with us, public measures continue to be heaped upon us without stint, that undoubtedly cause ten times the amount of wickedness and misery than has ever been produced by the most extended traffic in ardent spirits.

In thus offering my views to the public concerning the subject of Temperance, I wish it understood that I am totally opposed to the use of ardent spirits which are most in use among us, and would willingly join heart and hand in any effective movement that would drive not only its abuse but its use from our country and from the world. But, in acknowledging myself to be a strict Temperance man, I am desirous of conveying the idea at the same time that I consider the fashionable Temperance movement of the day as one of the absurdest schemes that was ever projected to bring about a desired end; and with this impression, I would urge all the true friends of Temperance to declare and act against the wild schemes of the

party that passes by this name, as they would oppose one of the most dangerous disorders of the age.

It is a condition imposed upon every individual of our race, that when awake and in a state wherein our mental faculties are undergoing their ordinary exercise, that we are at all times doing either good or evil; this law will apply to the temperance question as to every other subject which men are called to discuss; and with respect to this question as it is now presented in our country, there can be no neutrality, or ought there to be any indifference about it; for according to the idea that I have been led to entertain of the evils arising from a lukewarmness upon the subject, I believe that the man who does not directly oppose the movement of the temperance party as it is called, is as guilty of as much wrong as he who acts, talks or votes directly in its favor; and to show the propriety and correctness of this belief, and the correctness of the effective action that should grow out of it, I beg leave to offer a few brief reasons.

If we take the above doctrine to be true, that we are at all times doing good or evil, the question whether a man by voting a temperance ticket is doing wrong or right, can be easily settled, for if we can show that the temperance movements of the day are wrong, or what is the same thing, they are attended with no benefit; it follows that any vote given for the purpose of keeping such movements in operation must be equally improper and unjust. The reason why most men who vote a temperance ticket think they are doing that which is honest or righteous, is because they suppose that all which they do is done from good motives: but good intentions are not good acts; for if good wishes constitute righteousness this would be a most righteous world, since scarcely a man is to be found in it but would, if consulted, endeavor to exonerate himself from all crime, wickedness or weakness that is common to our nature, on the score of honest intentions. The only criterion, therefore, by which we can determine concerning every man's honesty and justice, is by means of his honest and just acts; for if we find that a person's acts are invariably just and hon-

est. we may reasonably suppose that he is not accidentally a righteous man but one that would be so at all times both in will and in deed.

The effort to prevent the practice of drinking ardent spirits by means of stringent legislative acts has not been a new thing to the politicians of England and this country for the last two hundred years : and the policy which would endeavor to make men virtuous and temperate by acts of parliament, has long since been given up in the parent country. In our country, however, where every man is supposed to be capable of being a politician who exercises the privilege of voting, the people are called upon to sanction and to enact regulations that in every other country have been found to be highly injurious ; and yet, with the experience of centuries before us, our legislators are to be sent to their legislative halls with instructions in their pockets to vote for acts precisely of a similar character to the regulations above alluded to, which the legislation of every other country has proved to be deeply injurious to the public good : and therefore, we may, without violating any propriety of sound reasoning, come to the conclusion that when a man votes a temperance legislative ticket, and thinks he does an honest act ; and expects to find a strictly honest legislator in the person whom he would elevate to the condition of a legislative reformer, he will find himself to be most wonderfully wrong both in his expectation, and in the result of his action.

I offer the above remarks with the qualification, however, that I am not so far enlisted in the policy or good sense of European legislation as to suppose that the precedents it affords us are always to be followed in this country : but would have my remarks have no more extended meaning than to assert that any policy or system which the experience of centuries in Europe has shown to be improper and unjust should not be adopted with us, until the most cautious examination and most deliberate inquiry affords us positive evidence that the experience of the past in other parts of the world is not at all applicable to the present condition of things as they exist in our country.

According to the above views in relation to political honesty, it may be easily concluded that a man who votes what is called the Maine Temperance ticket, cannot be any more honest than the man who suffers his name to be placed upon such ticket; but although it may be considered harsh to connect dishonesty with the simple and apparently harmless act of giving a vote, we ought all of us who are voters to know, that there is a great responsibility attached to the duty of voting which cannot be improperly discharged without being guilty of a great breach of trust; for we all know that although the right of voting has been extended in our country to all adult males who are twenty-one years of age or upwards, yet it is a trust which in the sphere of its operations, should be as sacredly discharged for the benefit of all mankind as the office or duty of President of the United States. Now, as this trust generally happens to be abused most by those who suppose that the powers of the people of our country are the same as those of the voters which are therein, I would observe that this is a gross mistake; for it has been decreed by an authority that we have no right to question, that the People of every country is composed of all the men, women and children that live in such country, and who are capable of judging between good and evil; consequently, if there is any sovereign authority in the people of the United States which is not given to the several governments therein, the authority is as much reserved to the women and children as to the voting men; the only trust or power therefore which voters among us can properly exercise beyond the powers belonging to the great body of the people, is simply the right of selecting and voting for the several officers who according to the constitution and laws of our country compose the government of the land; and as this trust which is given to the voter is not given for his personal advancement or aggrandizement, but for the benefit of all the people of the land, his duty is therefore to select such men and only such men, as are capable of doing the same justice to women and children, as they are to the other part of the people.

A voter's right and duty being thus limited, it is certainly

wrong for any one of this class of the people to forstall the opinion of any candidate for public office, by deciding in advance, what such candidate shall do, when he becomes the actual incumbent of the office to which he aspires; for if this practice should become common, the pantalooned voter in effect, not only assumes all the powers which belong by the constitution to the government alone, but also takes upon himself all the reserved rights of the People, which belong as we have seen, as much to women and children as to that part of the people who sport in the dignity of male men; the office and duty of selecting and voting for candidates for public office, being all the right that voters can legally exercise under our several state constitutions, it follows after the duty connected with this right is discharged, that if a voter expects any greater favor from the man for whom he has voted, than from the man for whom he has not voted, he expects that, which no honest man ought to expect; since such expectation would necessarily end in placing all power in the hands of a few demagogues, who while nominally acting for the great body of the voters, would really assume all the authority delegated and reserved by our constitutional charters to the People and to the government of the people. We cannot, therefore, as a matter of right call any voter honest, who obtains a pledge or an equivalent to a pledge, from any candidate for legislative honors; for as it is illegal and unrighteous for the candidate to offer any money or any other influence or inducement to a voter for his vote, so it is equally unrighteous and illegal for the voter either before or after the election to hold forth any influence or consideration, that may effect or be connected with any future act of legislation; the voter and the person voted for, may thus become guilty of immoral and illegal conduct, without the least shade of a suspicion that they were doing wrong; but, without intending to impute conduct of this character to any of our electors who have become partial to the Maine Liquor Law system of legislation, still I think it my duty to apprize them that they stand on rather dangerous ground; and that it behoves them in the position they occupy to be exceedingly

cautious in all their movements, lest in their attempt to bring a future law to bear upon the rum-sellers as they are called, the rum-sellers may bring a present law to act upon them for conduct that is already both dishonest and illegal.

It is not probable the Maine Temperance men in general think that they are any worse than any other class of politicians have been, by organizing themselves as a party for the purpose of suppressing the manufacture and sale of ardent spirits : but although their intentions may be more pure and more honest than those of any other party in existence, in their acts they certainly have made a more serious encroachment upon the rights and prerogatives of the People, than any other party that ever had an existence among us : and this being a truth which requires for its explanation that something more should be said respecting the relative rights and duties of the People and the Government than has already been offered, I beg leave to add some additional observations, which may have a tendency to show in what way the much talked of Maine Law is really of that offensive and injurious character which I have assumed it to be.

It is generally assumed as the basis of a despotic and absolute government, that the State is supreme, and that the persons who assume the discharge of the legislative, the judicial and the executive powers have absolute and entire control over the rest of the people : now this is not a fair idea of the nature of government, even when exerted in an absolute monarchy ; for all the great body of the people who are not members of the government, or can ever expect to be, have prerogatives and rights as well as the king or emperor himself ; and have a right to call for redress from the people at large, should at any time the powers that exercise the government combine to enforce an oppressive act : and although the People of the United States have a constitutional government which is taken at stated times from the nation at large, yet such government is, or rather ought to be, within its constitutional sphere, as authoritative and powerful as the government of Russia itself ; for every government to answer the end of its creation, ought to

be in such condition to ensure respect abroad and obedience at home; and if it failed to effect these ends, it would not answer the purposes, or come up to the duties of a government, any more than a father would comply with the duties of a parent, who remained unconcerned if a child of his should offer a deaf ear to his remonstrance or refuse to obey his wholesome and necessary commands; the same authority and respect that extends the power and authority of the government of the Union over our whole country should be held and maintained by and towards the several State governments among us over their several State territories, and in the exercise of this extended relation, it should be remembered, that it is the several officers of the government which compose the government of a State, and not the voters, or any other class of the People. The difficulty with us, however, is, that the efficiency of our several governments is oftentimes very much impaired by party leaders assuming, on account of supposed favors which they have offered to the several members of government, a right to control or to influence the wheels of the government itself; and as these leaders always assume that they are speaking for the people, the government with the best intentions in the world, is sometimes led away from its proper duties, by the deleterious influence which surrounds them without knowing that they are acting in direct subserviency to the purposes of a few demagogues rather than for the interests of the great body of the people.

The evils which heretofore have arisen from the influence of party factionists and disorganizers in our country, have in general proceeded from very different motives from those which appear to control the Maine Temperance Law people; for if we can judge of motives from actions, it would appear that the grand Temperance rally that is about to be made under our Temperance leaders in the several States of the Union, has an arbitrary and tyrannical aspect, which does not appear to have been seen at any time heretofore during the existence of our Republic; and the offensive character of the proposed innovations of the new government, because we have

in these United States: a constitution which distinctly acknowledges and admits, that the powers of government do not swallow up those of the people, but that all the powers which have ever been held by the latter, and which have not been delegated to the several governments of the country, are still in possession of the people, who have of course the full liberty to enjoy such reserved rights in the same perfect manner that they would have done if no law or government, or constitution, had ever been framed to divest them of these natural privileges.

The reason why it is physically impossible for governments to enforce laws which command men to be moral, temperate or just, is owing to the law of our nature, which will ever prevent human authority from punishing transgressions which are beyond its reach or supervision. Of course, then, every government to be just, must necessarily be one of limited powers: for, if the powers of any State endeavor to extend their authority beyond the reach of human cogitation, the State necessarily becomes guilty of tyranny and oppression, even if their authority thus assumed should be with the consent of every individual in the nation: it is possible therefore, that a free republic, or one that has that name may become as tyrannical and arbitrary as the most absolute governments upon earth, merely from the circumstance of the people of the republic clothing its government with powers that no government can exercise without doing injustice to the larger portion of the people, who may be subjected to its influence. A power, therefore, that cannot dispense equal justice, must necessarily be arbitrary in its acts, since it is not for want of law or want of willingness to enforce the law, that despotism always becomes infamous, but because of its general incapacity to dispense uniform and even balanced justice, makes the oppression of those that suffer, when contrasted with those that deserve to suffer, appear to be so enormous as to excite among the people at large the deepest feelings of revenge and distrust even against authority of the most lawful and necessary character.

We in the United States are in the habit of calling ourselves a free people, because nearly all the influence is in the country

have an equal voice in the selection and creation of our government : but in the making of our laws, and in the dispensation of justice, it may sometimes become possible for us to become inferior to the people who live under a monarchical government : for, if it is conceded that an absolute king is sometimes capable of making just laws, and of appointing honest and capable judges to enforce and expound such laws, it is clear that in such a condition, the people who are under an absolute monarchy, may enjoy one of the blessings of a good government, which ought always to belong to a free republic ; and will continue to be proportionably happy and prosperous, as long as such laws and such justice continued to be administered to them. On the contrary, it may be possible, that among ourselves a legislature may pass an oppressive and unjust law, and our courts be unable to enforce it without exciting great dissatisfaction : and yet such law, and the means of enforcing it, would not of course be any less tyrannical and oppressive because it happened to be enacted and administered by the government of a free people ; and therefore, to be really free in substance, as well as in name, we must at all times possess and enjoy the elements and the ingredients of freedom : one of these elements being the distribution of equal and impartial justice among all classes of our citizens, we cannot be free, unless we have equal laws which are equally and justly administered to all ; for without this safeguard, government invariably becomes an oppressor, and law a tyranny, whether made and enforced by a single despot, or made and submitted to by millions of people, who bear the name of freemen.

The remarks last above given, have been offered to my readers in order to support the position that the Maine Temperance Law is really of the oppressive and arbitrary character that I have assumed it to be ; and that it presents a more direct encroachment upon the rights and prerogatives of the people, than the act or acts of any other partizan legislation that has ever before been enacted in our country ; and this difference between temperance legislation, and other party legislation, is

because by the former process of making laws, the people of Maine, as individuals, are deprived by the Maine liquor law of certain privileges and offices which private individuals only can properly exercise ; while the most that has been done in our country by party legislation for party associations (previous to the Maine Law party coming into power,) is the getting or attempting to get the control of operations which belong to the government alone. We have had among many other parties, a party that was called the Protection party, or a party that associated together for the purpose of inducing government to encourage domestic manufactures by high duties upon all importations ; but, although this party is said by its opponents to have had a tendency to encroach upon the direct and reserved rights of private individuals, yet no power entirely new and extraordinary was asked by them to be given to the government ; and had this party even induced the government and people of our country to believe that universal prosperity depended entirely upon high tariffs, there would have been no unusual feature of oppression introduced among us ; for custom houses and receivers of duties not having been uncommon objects in our country ever since the establishment of the government, the few additional measures that would have become necessary to carry out the views of the protectionists, might have been submitted to without exciting any very great commotion among the people : but there is no circumstance or feature connected with the protection system, that assimilates it to the system inculcated and recommended by the Maine Temperance Law ; and this may be said, not only with respect to the protective system, and the party that supported it, but with respect to any other party or system that has ever been started among us, for the purpose of carrying out some professed object of public benefit by means of legislative authority.

In order to show some of the most prominent characteristics of the Maine Law, I quote part of two of the clauses at the beginning of the law which reads as follows :

“SECTION 1. No person shall be allowed at any time to manu-

facture or sell, by himself, his clerk, servant or agent, directly or indirectly, any spirituous or intoxicating liquors, or any mixed liquors a part of which is spirituous or intoxicating, except as hereinafter provided.

§ 2. The selectmen of any town, and mayor and aldermen of any city, on the first Monday of May annually, or as soon thereafter as may be convenient, may appoint some suitable person as agent of said town or city, to sell at some central or convenient place within said town or city, spirits, wines or other intoxicating liquors to be used for medicinal purposes and no other: and said agent shall receive such compensation for his services as the Board appointing him shall prescribe; and shall in the sale of such liquors conform to such rules and regulations as the select men, or mayor and aldermen as aforesaid, shall prescribe for that purpose."

From the above law it will be seen that if a government of a State is permitted to say that no body can manufacture and sell only those kinds of liquids, which such government may think proper to allow, of course it is in the power of a State to lay down rules by which every thing in the shape of food and drink may be thus regulated by law; by the same abuse of State power, the exercise, the amusement, the religious instruction of every individual throughout our Union, may be put under similar control and restraint. It may be said, however, that no Legislature dare pass acts of this kind, because the people would not submit to such conduct; and that, therefore, any intimations of danger from similar legislative action, are not entitled to attention: but if we remember that it is possible at any time for a few noisy idle people to get up a very great excitement; and that it is not impossible, at almost any time, for such excitements to have an undue influence upon a majority in our Legislatures, we are in danger, if the Maine Liquor Law system of legislation prevails among us, of having the most tyrannical and arbitrary laws put upon our statute books, without the Legislature knowing or supposing that any encroachments upon the rights of the people had been enacted, or had been attempted.

The question before us however, is not concerning the possible extent of encroachment, which State Legislatures in future may make upon the individual rights peculiar to the people of our country, but should be confined principally to the legality of the Maine Liquor Law, which, undoubtedly, as a whole, is more tyrannical and arbitrary than any other law that has been passed in modern times, because it assumes a power which no government heretofore with any pretensions to freedom, has ever undertaken to assume. The apology assumed for its passage, that a majority of the people of the State of Maine have asked for and sanctioned its enactment, is the grossest nonsense, for the people of Maine, like the people of the other States of the Union, have no power to pass any law whatever; for the only constitutional and legal bodies that have any authority to make any new law among us, are the Legislatures of the several States, and the Congress of the United States; and, therefore, if the Legislature of Maine has exceeded its constitutional powers in the passage of the act, it makes no difference whether every man, woman and child in the State desired its passage; as the only question is, and ought to be, whether the Legislature had constitutional power to pass such act, or any similar act? and if it had no such power, then it is very evident that all the Temperance movements of our day, which require legislative enactments to bring them about, are begun in a way that must ultimately end in defeat, even if the movers of the Temperance excitement at the beginning of their efforts should induce every Legislature throughout the Union to approve and sanction their efforts by laws drawn in the most careful and accurate manner that legal shrewdness might be able to suggest.

If we admit the people in their individual capacity, have the right to enjoy the powers reserved to them by the constitution of the United States, it is clear that every person in the country is permitted by law to do every thing which the law of our country does not consider a crime, or which may not encroach upon the direct rights of others: the government, therefore, before they can authorize any of its courts to pass judgment

against a person, for any violation of law must have done some act tantamount to a declaration that such assumed violation of law was illegal before the passage of the act; or must show that the alleged violation of the law was in itself a crime, and contrary to what is called the law of nature; but, as it does not appear from this Maine Law itself, or from any law in existence previous to the passage of the law, that the manufacturing or selling of spirituous liquors, was declared, or considered to be criminal, it follows that there is nothing to give any legal sanction to the prohibition contained in the first clause of this act, and consequently, that clause with all its appendages, is a mere nullity, and should be so decreed by every judge in our land, who is thus authorized to decide by a provision to be found in the sixth article of the constitution of the United States.

The above objection to the Maine Liquor Law, constitutes the plainest and most direct argument, that can be raised against its legality and constitutionality; and people who may be in danger of being led away from the truth by the refinements of speculative reasoning, should be careful not to allow the strong ground, that is to be interposed by this objection, to be taken away from them by any specious or indirect arguments; and to impress the objection above advanced still more strongly upon the minds of the readers of this paper, I would ask each of them to examine by what act of the law has the privilege or practice of manufacturing or selling spirituous liquors, been declared illegal, or criminal; and if nothing appears in our laws that makes these acts nuisances or offences, then the Maine Liquor Law is not only a nullity, but all who presume to act under it, are trespassers, and are liable to pay all damages that may be sustained by reason of any attempts to enforce the law; for if there was not this last wholesome restraint upon private individuals, who undertake to enforce an unconstitutional act, there would be no limitation to the amount of illegal acts that would be passed by our Legislatures; but as the penalty for unconstitutional acts, very properly falls upon the persons who are generally the projectors of

unconstitutional laws, it is, of course, very proper, that they who first propose the injury should suffer most by its consequences. In order to indicate in what manner State authorities may legally proceed to make practices, that once were not nuisances or crimes, to become so, I will quote part of a preamble and law that was passed by the Legislature of the colony of New York, in the year 1772, for the suppression of private lotteries :

“ Whereas, the Laws now in Being for the Suppression of private Lotteries, have been found ineffectual to answer the salutary Purposes intended by the Legislature in enacting the same : and whereas many mischievous consequences have been experienced from this Practice which has proved highly prejudicial to Trade, has occasioned Idleness and Inattention to Business, been productive of Fraud and Imposition, and has given Birth to a dangerous spirit of Gaming : For Remedy whereof, and to suppress a Practice which may be attended with Distress, Impoverishment and Ruin to many families.

1. Beit enacted, adjudged and Declared, by his Excellency the Governor, the Council and the General Assembly, and by the authority of the same, that all Lotteries other than such as are authorized by the Legislature, are common and public nuisances. ”

It will be seen that our forefathers before the Revolution, were so extremely cautious in regard to any apparent encroachment upon private rights, that even with respect to such abominations as lotteries, which are everywhere admitted to be one of the greatest nuisances of civilized society, they took the precaution at the head of the act which was to suppress the evil, to advance the reasons why the power of suppressing the evil was assumed ; for, it is a principle of the common law, that before any freeman could be restrained by a new law from doing anything which custom or law had before permitted him to do, that some public or general necessity for the proposed restriction must be exhibited ; and this is the reason why the laws of the State of New York, which were enacted previous to the adoption of the Revised Statutes in 1829, always were

preceded by a preamble, when any innovation upon the former privileges of the people was intended to be brought about : but although this wholesome old practice seems to be discontinued in the State of Maine, as well as in the State of New York, yet the laws in relation to innovations upon popular rights throughout the Union, are the same as they have been by the common law, and the only difference which exists between the former practice, and the present, consists in the necessity of showing by other proof, than that which is given in the law itself, that public necessity has justified the innovation, which is proposed to be accomplished by the enactment of a new law.

But there is no necessity, whatever, of showing that the Maine Law has not created a nuisance out of a practice, which was before the passage of the law legal, and tolerated ; for this law distinctly honors the very evil which our Temperance friends tell us it was intended to suppress ; and the only constitutional question, therefore, that is presented to us by the law, is whether the Legislature of a State can take away from any of its citizens, a legalized business, and give it to officers of its own creation ; and if this can be done, then there is not a trade, occupation or pursuit, now enjoyed or pursued by private citizens, but which may be transferred by legislative authority to State officers, to town officers or to other private citizens ; and, consequently, all the property or business of the country is under the control, and at the mercy of Legislative lobbying, whenever that active branch of our Legislature usually called the Lobby, may think proper to exert its influence.

In order to oppose such encroachments upon our rights as are permitted by the Maine Law, it should be remembered that the Constitution of the United States has the following articles :

“The enumeration in the Constitution of certain rights shall not be construed to deny, or disparage others retained by the people.”

“The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

My object in presenting the above clauses to the examination of my readers, is to show them that every individual in our country has certain rights, over which, neither the government of the Union or the governments of the several States, has any kind of control ; and that it was under the apprehension that factionists and disorganizers would assume the reins of our several governments, to disturb and destroy the personal and private rights of the people, the above clauses were added to the original constitution ; and that these additions, together with others which were adopted at the same time, were not employed for the purpose of giving any new or unusual powers or privileges to the people, but were set forth as declaratory principles only, in order that the general nature of the people's rights and privileges might always be exhibited to them, and that the general duty of every freeman to keep these rights and privileges inviolate, might always be before him.

I have felt it was my duty thus to state that the amendments to the original constitution of the United States, which extend from the first article to the tenth inclusive, are acts set forth in illustration of the general rights of the people, and are not intended to fix, enlarge or define, any part or portion of these rights ; and my duty has appeared to be the more imperative, because I know that there are many persons among us, who are supposed to have some acquaintance with constitutional law, that have no idea of the rights of the people, except such as appear to be conceded to them by the several constitutions of our Union ; but the truth is, in regard to all the paper or chartered constitutions we have in our country, that these last named constitutions are concessions made by the people to the government, and are not concessions made by the government to the people ; and consequently, all powers that are not directly given to our several governments, are retained by the people, and can be exercised by no other body but the people, until this sovereign Body, called the People, by virtue of some of these fundamental contracts, commonly known among us by the name of constitutions, enlarge the powers of government by express and direct provisions for that

purpose. From these views of the nature of constitutions, and governments, as they exist with us, it will appear that no State of our confederation has any power, in any case, to encroach upon private rights and private business ; and, consequently, that the power which the Legislature of the State of Maine has assumed, of appointing officers to sell intoxicating spirits in the several towns of the State, is without warrant or authority of any kind, inasmuch as the business of rum-selling or any other occupation of the kind, does not, and cannot come within the purview or range of governmental duties ; for, if such trades are to be allowed at all, it is evident they must be carried on by private persons only ; and cannot, without an overthrow of our republican institutions, be entrusted to any officers of our several governments, inasmuch as the duties of these persons are limited altogether to duties and offices, which the people cannot discharge in their own persons.

The constitution of the United States, or that document which generally passes by that name, is nothing more than a paper or a charter, that sets forth the capacity of the government of the United States, and should be restricted entirely to the operations of a republican government, without having any thing to do with the private rights or duties of the People, either in their individual or collective capacity : and to show what this document, or constitution, properly is, I present to my readers the preamble to the original constitution of the United States :

“ We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.”

It will seen by this preamble, that the People of the United States at once assumed all the powers and duties of absolute sovereigns, over all the territories that belonged to the United States at the time of the adoption of the constitution, without referring to any higher authority than their own will ; and that

out of the absolute sovereignty thus assumed, the following dispositions were made: First, a government called the government of the United States was instituted: Secondly, certain powers which had previously been enjoyed by the respective States, were reconveyed to them respectively: and Thirdly, all rights not expressly conceded to the government of the Union and to the several States respectively, were retained by the people in their sovereign and in their individual capacity: since then, as we perceive from the general constitution itself, the government of the Union is simply one, that is limited to the specific powers that are set forth in this document; and since the powers of the several State governments are also by the same instrument restrained within the limits of a republican form of government, and have no greater power in their respective spheres than the general government itself: we may thus perceive, that after all the various concessions which the people of our country have made to the several chartered constitutional governments which are therein, that almost all the authority and power which is of any value and efficacy, is still retained by the people in their original capacity.

I have referred to the nature of the constitutional charters of our country, for the purpose of showing my readers that no such power as that assumed by the Legislature of the State of Maine, when they enacted the Maine Liquor Law act, was ever given by the people of the United States to the State of Maine or to any other State in the Union; for all the powers that the Union itself, as a State, or the people of the several States, as States, can assume, are very properly limited to certain well known functions peculiar to the government of a republic in which the people at large are the only sovereigns. The officers of every government among us heretofore have been very properly restricted to certain well known duties, which the people, either in their collective or individual capacity, could not discharge: but the Legislature of Maine have however, thought proper to reverse this long established rule, and have attempted to deprive their people of certain rights and offices, which the people in their individual capacity can

only exercise and occupy; and have further attempted to give these rights and offices to certain town officers, which the latter by the law of nature, and by the constitutional charter of our land, can neither enjoy or discharge. The language and policy of the Maine Liquor Law is, therefore, in direct opposition to constitutional law, as well as private right; and as such can be constitutionally dealt with, either by processes issued out of our courts of justice, or by those more summary writs of abatement, which becomes an indignant people to make use of, when they have been imposed upon by the professors of false philanthropy and pretended patriotism.

The constitution of the United States, in the second amendment that was made thereto, declares that "a well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed," and when it is recollected that this assertion of the people's right to keep and to bear arms, immediately follows the assertion of the right of the people "peaceably to assemble and to petition the government for a redress of grievances," it should follow, that it was the intention of the authors of the clauses referred to, to inform the people that arms should always be kept and borne by them, for the purpose of vindicating their own rights whenever "a redress of grievances" could not otherwise be procured from the government of their country.

I have referred to the ultimate constitutional appeal that may be resorted to whenever the people's rights are impaired, for the purpose of intimating to the readers of this paper, that there are various kinds of constitutional remedies that may be resorted to when personal liberty is at stake; but, as there ought to be at present, no apprehension that the enormities perpetrated by the enactment and enforcement of the Maine Liquor Law may not be abated by ordinary legal process, there is no necessity of showing in what way, with the smallest cost of life and property, the Maine Liquor Law agitation may legally and constitutionally be put down by force of arms; I shall, therefore, return again to the course of my argument,

which is intended to show, that there is not in the manufacture or sale of ardent spirits anything that partakes of the character and quality of a nuisance, to justify any legislation of our Union to abolish such manufacture and sale on account of these practices being nuisances according to the common law.

I give to my readers three sections of a chapter upon the subject of nuisances, as they are found in the second volume of Hale's *Pleas of the Crown*, for the purpose of showing one or two common law principles, which are of importance for the proper investigation of the subject before us: the sections given are the first, sixth, seventh and tenth sections of the seventy-fifth chapter of Hale's work:

"Section 1. It seems that a common nuisance may be defined to be an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or neglecting to do a thing which the common good requires."

"Sect. 6. There is no doubt but that Common Bawls, Houses are indictable as common nuisances. Also, it hath been said that all common stages for rope-dancers, and also, all common gaming houses, are nuisances in the eye of the law, as hath been more fully shown in the foregoing chapter: not only because they are great temptations to idleness, but also, because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood."

Sect. 7. Also, it hath been holden that a common play house may be a nuisance, if it draw together such numbers of coaches or people, &c., as prove generally inconvenient to the places adjacent. And it seems to be a proper distinction between play houses, and the nuisances mentioned in the foregoing section, that play houses, having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but may only become such by accident, whereas the others cannot but be nuisances."

"Sect. 10. It hath been holden, that it is no common nuisance

ance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell. But the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely the trade of a brewer is as necessary as that of a chandler; and yet it seems to be agreed that a brew-house erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighborhood, may be indicted as a common nuisance; and so, in the like case, may a glass-house, or swine yard."

The above extracts from Hale's *Pleas of the Crown*, a well known work upon the criminal law of England, although taken from a work which may seem to have been written altogether for an English latitude, are as sound law, in almost all the States of our Union, as they are in the parent country; and in the constitutional question before us, will enable us to draw the exact and true line, that exists between the inalienable and perfect rights of the people, and certain other rights of the people, which are susceptible of being modified and altered by the acts of our several State Legislatures: as the nature of these perfect and inalienable rights, are supposed to be well understood among us, I will now only briefly refer to the second class of the people's rights, over which the Legislatures of our country it will be admitted have a right to exercise necessary control.

A common nuisance among us, (taking Hale's views of criminal law as our guide) is an offence against the public, either by doing a thing which tends to the annoyance of the people, or by neglecting to do a thing which the common good requires. I place this definition of common nuisances, before my readers because it enables me to describe thereby the extent of legal capacity that ought properly to be held by the legislatures of the several States; to understand this capacity aright, we should recollect that all rights are inseparably connected with duties, and that this law extends to the rights belonging to the Legislatures of our several States as it does to

the rights of individuals or to the rights of the people. Now, as it is the plain duty of every Legislature to provide the means by which common nuisances may be removed from the State over which its jurisdiction extends, it follows that every State Legislature has a right, unless constitutionally restricted not only to suppress every general offence which tends to the annoyance of the people of the State it represents, but also, to compel by general law every individual member of the State to perform the several duties which he owes to the community of which he is a member: and, this is not only the right of a Legislature, but is also its positive duty, and so much is the exercise of this duty imperative upon the several officers of a well constituted government, that if there are any of them who do not employ themselves in the abatement of all nuisances, which come within their cognizance, they are liable to be impeached for a nuisance, or neglect of duty themselves, as they would be for any nuisance, but amounts to a positive and direct annoyance to the people. The question, therefore, concerning the duty which should come before the conscience of every honest legislator, to whom the subject of the Maine Liquor Law is presented, is either to act in its favor, on account of its having a tendency to remove the evil of intemperance, or take a decided stand against it on account of the great public injury which would result from any encouragement of the proposed system of Maine Liquor law legislation.

I have placed before my readers the above ideas relative to the close connection which exists between rights and duties, in order to show them in what manner a member of our State Legislatures may honestly discharge his duty, in respect to those rights of the people over which such Legislatures have a constitutional control, and for this purpose, I have carefully drawn up three several provisions, which I consider are absolutely necessary for every penal act, and without which, no Maine Liquor Law act, or any other act having in view similar ends, can at any time be either constitutional or just: the three provisions are as follows:

Before any prohibitory law can be passed by any of our

legislature, there must not only be a positive and absolute evil or nuisance exhibited that it has become necessary to suppress, but it must be an evil, or a nuisance of which human laws can distinctly take the full cognizance, and human tribunals can fully suppress by means of suitable punishments and penalties.

A second requisite to secure legality for a proposed prohibitory law, is, that the evil proposed to be cured, shall be within the legitimate province of the particular Legislature from whom legislation is sought for its suppression: to make it within the province also involves the necessity of ascertaining, not only whether the evil proposed to be cured, is a private evil for which no individual by the laws of the land has already a remedy, or that it is a public evil which cannot be adequately remedied for by any penal law already in existence.

A third requisite to secure the above mentioned ends, after the first two as I have set forth are secured is, that the punishment or penalty which is intended to be inflicted upon the offender by the proposed law shall not only be distinctly stated in the law, but the court before whom the offence is to be tried, shall know the exact penalty which may be imposed, but also, the citizen as well as may know the penalty set forth in the law shall not conflict with any constitutional or legal right, privilege or property of the party or parties who may be charged with the offence of the law.

Notwithstanding that there are many conscientious persons in our country who really think that some good will come out of the Maine Liquor Law agitation, I will endeavor to honor their good intentions as far as I can, by asking them, what there is in the nature of positive crime or nuisance, that they propose to suppress by the act of which they appear so fond? The manufacturing of liquor which may intoxicate cannot, and ought not to be made penal by law, because such liquor would not be a bad thing in itself, until it was drunk unless it had this quality: and to punish the manufacturer of liquor, merely on account of the abuse of it, would be the grossest injustice: and to make every drop of such liquor be converted into a crime,

since there certainly cannot be anything naturally immoral in the simple act of selling that which is lawful for any other person to buy, or to use: nor can the act of drinking such liquor, or the act of offering it to the lips of another to be drunk, be made to constitute an offence, for although wine like other strong drinks does sometimes intoxicate, yet at other times, it may be taken in pursuance of medical advice, or in discharge of a religious duty. As I have been unable to find that the manufacturing or selling of liquors because they may intoxicate, can be made criminal by any of the above rules of legislation, which are given as the common law doctrines upon the subject, I do not hesitate to say, that it is entirely impossible, in order to be consistent with justice and common sense, to pass a law according to the Maine Liquor Law platform, which can stand the test of legal scrutiny, or bear the examination of impartial reason.

The efforts of the Maine Liquor Law advocates are, in my opinion, directed altogether against possible and prospective evils, and are not brought to bear at all against legal and real offences: and I would, therefore, say to these gentlemen, that if they would put down crime by law, they must direct their law against some offence which they can define, and against which they can enter a complaint: and not against a presumed or incidental matter, that may, or may not be the cause of the evil of which they suppose they have reason to complain. If men are guilty of disorderly conduct in such manner as to disturb the peace and good order of the neighborhood in which they live, they ought to be punished for such conduct: and it does not make any difference in the disturbance actually perpetrated, whether it is caused by political excitement, by religious enthusiasm, by spiritual manifestations, or by spirituous liquors, as it is always from some positive and material injury, which is either sustained or apprehended, that a penal law derives its efficacy: and not from any doctrine or excitement which the supposed guilty party may have entertained or approved. If, then, the Maine Liquor Law party must have prohibitory laws, let them confine themselves to the prohibi-

tion of crimes that grow out of the abuse of liquor, and if they can secure the passage of an act that should hang a man for getting drunk, (whatever might be said about the justice of the law,) it is certain that the punishment would fall upon the only person that the law could make the real offender, unless it could be shown that the drunkard at the time of the commission of his offence was not in possession of legal discretion, or was compelled to drink by the violence of others.

Although the popular vote in several of the States of the Union, has set strongly in favor of a Maine Liquor Law, yet as such law would be as unconstitutional and illegal with the voice of all the States of the Union in its favor, as it would be without the sanction of a single State to recommend it, there exists no reason why those persons who have become convinced of the tyrannical and unjust system of legislation pointed out by this law, should refrain from employing legal and constitutional means to put it down: for this purpose, there remain three several modes of action, each, or all of which may be safely and properly used at this crisis when, of all times, it is particularly important that only sound constitutional processes should be employed.

The first of these great constitutional means of redress has already been alluded to, when we spoke of the right of the people to keep and to bear arms: and although a reference to this mode of redress at the present time may have the appearance of bravado, I have thought it expedient to refer to it, as it is apparent that all who are disposed to join in an active resistance to further constitutional innovations, should be apprized that their resistance will be without its efficacy, unless they shall be prepared, to use this last mode of redress when all others shall fail: but as this means of salvation is an appeal of the last resort, I should not have thought it proper at this time to refer to it at all, if the list of remedies for impaired national constitutions could have been made complete without it.

The next means of redress for us, may be afforded by application to our courts of justice: and these means present themselves in two divisions; one of which should be, to bring the

legality of the Maine Liquor Law, to as speedy a decision as the action of the United States Courts will permit; and the other should be, to prefer indictments in our State Courts against some of the persons, who have entered into conspiracies similar to those of the Carson League, for the purpose of bending the action of our State Legislatures to the accomplishment of their partizan purposes.

The third means of redress, should be confined to our legislative halls, in preventing as far as possible, the perpetration of any legal enormities similar to those contained in the several clauses of the Maine Liquor Law; and, in addition to remonstrating against the enactment of this law, I contend that it is necessary some steps should be taken to prevent any of those persons from taking their seats, who have been elected to any of our State Legislatures, upon Maine Liquor Law pledges: for no person can be an honest representative of the people, who pledges himself in advance to any particular course of legislation, inasmuch as he is, when pledged, in relation to the particular matters he is called upon to decide, precisely like a corrupt judge or juror, who, before he has heard any testimony in a suit that is pending before him, promises to one of the parties thereto, that he will decide the suit in his favor.

I have been somewhat surprised that there has not heretofore been some concert of action, among those opposed to the enactment of the Maine Liquor Law, for the purpose of allaying the irritation and excitement, that has pervaded the country in relation to this subject. But, although many persons suppose, that it is now too late to offer any effective opposition to the passage of this Maine Law, in the State of New York, yet, for my part, I do not think, that the times have ever been more auspicious for preventing encroachments upon the rights of the people, than they are at present; for many honest people, who appear to have been heretofore altogether indifferent to the Temperance excitement, have of late become alarmed concerning its progress, and are disposed to resort to all constitutional and legal means that can be properly used to stay



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the evil: I hope, therefore, that the Temperance people will assume all the fire and fury that they are capable of carrying. inasmuch as this course seems to be the only means which will arouse the great majority of their professed opponents to a proper sense of their duty and their danger: as may be seen, I have given credit to the good intentions of the Temperance Party, if I have given them credit for nothing else, but I shall be disposed hereafter to withhold even this tribute of my respect, unless they manifest more earnestness in favor of their cause, than has been recently exhibited by the Temperance party of the State of New York; for there has been so little zeal and devotion shown by this branch of the Total party, that the opponents of the Maine Liquor Law among us, have heretofore believed that the advocates of the law, had not spirit enough to stand up to their own resolutions, and consequently, there was no need of being disturbed by circumstances, which might vanish in their own smoke; but as I am so partial to all my countrymen as to believe that there is none of them but would be honest if he knew enough to be so, I impute the short comings of the Temperance party entirely to their lack of common sense and discretion; and am sure if they once could get up their courage to the sticking point, they could show as much of this useful commodity as would be necessary for all useful purposes: I would, therefore, say to all our Temperance "sons of Thunder" that if intoxicating liquors are nuisances in reality, they are as much nuisances now, as they ever can be, and consequently, may be abated at once by an old common law process without waiting the tardy action of our timid Legislatures.

But, as my limits prevent me from giving any further remarks herein, I close this number by saying, that my subject will be resumed in the next number.

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